IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6773 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

N T DESAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6773 of 1990

MR JF SHAH for Petitioner No. 1

MR AJ DESAI AGP for Respondent No. 1-3

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 27/09/2001

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution, the petitioner, a Medical Officer Class-II, has approached the Court with the grievance that he was

not permitted to cross the 'Efficiency Bar' with effect from 1.1.1988 when it was due and was denied the consequential benefits. After the petition was admitted in 1991, an ad-interim relief permitting the petitioner to draw salary as if the Efficiency Bar was crossed with effect from 1.1.1989 was granted subject to the result of the petition.

2. It was the case of the petitioner that after the appointment and confirmation of the petitioner as Medical Officer Class-II, his pay was revised to Rs.2200-75-2800-EB-100-4000 with effect from 1.1.1986 under the Revision of Pay Rules, 1987. The pay of the petitioner was accordingly fixed. The due date for crossing the Efficiency Bar was 1.1.1988 when, upon the petitioner's pay not being raised, the issue was raised. It is contended that the Confidential Reports were called for for that purpose and upon enquiry by the petitioner, it was found that he was not allowed to cross the Efficiency Bar on account of the remark of "Doubtful" against the column "Integrity" in his Confidential Reports. It was further contended that such Confidential Reports for the last three years of service were simultaneously prepared and never communicated to the petitioner. However, it is also stated that the petitioner's overall assessment was stated to be "Good".

3. The respondents have not, at any stage of the proceedings, cared to file any reply to the petition and, therefore, the factual contentions in the pleadings remained uncontested. It was, however, submitted by the learned Assistant Government Pleader that, according to his instructions, the adverse remarks against the petitioner were orally communicated.

4. The learned counsel for the petitioner relied upon the Resolution of the Government dated 29.9.1975, which is at Annexure-I to the petition, according to which, it was directed that in all cases in which it was proposed to disallow a Government servant to cross Efficiency Bar, the authority taking such decision is required to give an opportunity to the concerned employee inviting him to submit his explanation including documents if he wants to produce in support of the statement to be produced before the authority within a period of one month from the date of receipt of such notice. The authority concerned is required to consider all the factors and the explanation put up by the employee and then decide the matter and issue appropriate final orders. In the facts of this case, obviously and admittedly, this procedure has not been followed and the

Efficiency Bar appears to have been invoked without either the confidential remarks being communicated or the petitioner being given an opportunity of being heard. The learned counsel also relied upon a judgment of this Court in DR.A.N.BANERJEE v. STATE OF GUJARAT [1986 LAB.I.C.269] in support of the submission that when the employee's service was reasonably satisfactory and not below average or poor, he is required to be permitted to cross the Efficiency Bar.

5. In the facts and for the reasons discussed hereinabove, the petition is required to be allowed. The respondents are, therefore, directed to permit the petitioner to cross the Efficiency Bar with effect from 1.1.1988 in the applicable pay-scale and to pay to the petitioner the arrears of salary and other consequential benefits arising therefrom together with interest @ 6% per annum with effect from 1.1.1989. The learned counsel fairly conceded that there may not be any arrears for the period subsequent to 1.1.1989 in view of the interim relief which was granted as mentioned earlier. In view of the fact that the petition has remained pending for over a decade, it is expected that the respondents shall comply with this order within a period of six weeks from the date a copy of this order is served upon the respondents. Rule is made absolute accordingly with no order as to costs.

Sd/-

27.9.2001 (D.H.Waghela, J.)
(KMG Thilake)